

REMARKS/ARGUMENTS

Claims 1-7 have been amended by entry of this response. No claims have been canceled or added. Accordingly, claims 1-9 will remain pending for examination.

Objection to the Drawings

In the latest Office Action, the Examiner objected to the drawings because of typographical errors in the description of certain elements within Figure 4. These typographical errors have been corrected and a replacement drawing sheet has been submitted herewith. Accordingly, Applicants believe the replacement sheet overcomes the objection to the drawings.

Objection to the Specification

The specification has also been objected to due to certain typographical errors. Applicants have amended the specification as suggested by the Examiner. As such, Applicants believe these amendments overcome the objection to the specification.

Section 112 Rejection of Claims 2-9

Also in the latest Office Action, the Examiner rejected claims 2-9 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended claims 2-4, and 6-7 to more adequately describe the subject matter which applicant regards as the invention. Accordingly, Applicants believe these claim amendments overcome the section 112 rejection to the claims.

Section 103 Rejection of Claims 1-7

Claims 1-7 stand rejected as obvious under 35 U.S.C. 103(a) based upon U.S. Patent Publication No. 2003/0204579 to Lutz ("the published Lutz application") in view of U.S. Patent No. 6,327,677 to Garg et al. ("the Garg Patent"). The claim rejections are overcome as follows.

Embodiments of the present invention relate to a network measurement configuration apparatus. One aspect of the present invention as substantially recited in independent claim 1 is

"a measurement device selecting means which selects, absent input from a user, a measurement device responsible for a measurement based on the path information and measurement type."

As a threshold matter, the Examiner is reminded that in order to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP 2143). Applicant respectfully submits that neither the published Lutz application nor the Garg Patent, teach or suggest "a measurement device selecting means which selects, absent any user input, a measurement device responsible for a measurement based on a path information and a measurement type."

The published Lutz application relates to the management of information technological networks. Specifically, the published Lutz application discloses a user that inputs information for specifying a network device to be used for network management (See ¶[0074]). Therefore, *the user in the Lutz application must specify the network device* to be utilized for network management. By contrast, embodiments of the present invention disclose *selection of a measurement device absent user input*. Moreover, the published Lutz application absolutely fails to mention anything concerning network measurement or measurement devices. Automated selection, such as that taught by embodiments of the present invention, reduces the amount of network knowledge needed for a administrative operator, and allows for simple and efficient selection of a network measurement device.

The Garg Patent does not cure the deficiencies of the published Lutz application. Specifically, the Garg Patent is directed to a system for monitoring a network. However, there is absolutely no disclosure of measurement devices, let alone selection a measurement device absent user input. As such, the combination of Lutz application with the Garg Patent also fails to teach or suggest all the elements of the pending claims.

Based upon the failure of the cited art to teach or suggest each and every element of sole independent claim 1, it is respectively asserted that these claims cannot be considered obvious based upon the art relied upon by the Examiner. Continued maintenance of the obviousness claim rejections are improper, and these claim rejections should be withdrawn.

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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

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